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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,015	10/31/2003	Takashi Nakamura	101154-00014	7149

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EXAMINER

METZMAIER, DANIEL S

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 03/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



**UNITED STATES DEPARTMENT OF COMMERCE
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10/698,015

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EXAMINER	
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DATE MAILED:

This is a communication from the examiner in charge of your application

COMMISSIONER OF PATENTS AND TRADEMARKS

1. ☐ The communication filed _____ is informal/non-responsive for the reason(s) checked below and must be corrected.

APPLICANT IS GIVEN A ONE MONTH TIME PERIOD FROM THE DATE OF THIS LETTER WITHIN WHICH TO CORRECT THE INFORMALITY. EXTENSIONS OF TIME MAY BE OBTAINED UNDER THE PROVISIONS 37 CFR 1.136(a).

- a. ☐ The amendment to claim(s) _____, filed _____, fails to comply with the provisions of 37 CFR 1.121 and is accordingly held to be non-responsive. A supplemental paper correcting the informal portions and complying with 37 CFR 1.121 is required.
- b. ☐ The paper is unsigned. A duplicate paper or ratification, properly signed, is required.
- c. ☐ The paper is signed by _____, who is not of record. A ratification or a new power of attorney with a ratification, or duplicate paper signed by a person of record, is required.
- d. ☐ The communication is presented on paper which will not provide a permanent copy. A permanent copy, or a request that a permanent copy be made by the Office at applicant's expense, is required, see M.P.E.P. 714.07.
2. ☐ In accordance with applicant's request, **THE PERIOD FOR REPLY FROM THE OFFICE ACTION DATED _____ IS EXTENDED TO RUN _____ MONTH(S).**
No further extension will be granted unless approved by the Commissioner. 37 CFR 1.136(b).
3. ☐ Receipt is acknowledged of papers submitted under 35 U.S.C. 119 which papers have been made of record in the file.
4. ☒ Other: **SEE ATTACHED.**

NOTICE TO APPLICANT

Claims 1-17 are pending. Claims 1-17 have been withdrawn from consideration on the merits as directed to a non-elected invention. No claims remain that are directed to the elected invention.

Response to Amendment – Election by original presentation

1. The amendment filed on December 22, 2005 amending all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because currently amended claims 1-5 are directed to an invention that is independent or distinct from the invention originally claimed. The compositions employing molten metal is deemed to be a patentably distinct invention from the foamable powders originally presented. To the extent the carbonate would even exist in combination with the molten metal, said carbonates would be in substantially a different form than the carbonates as foamable powders set forth in the claims as originally presented.

The term molten is defined as “melted, such as in metal” or “reduced to a liquid by heating”. Applicants preferred molten metal is molten aluminum. Aluminum has a melting point of 660.37° C. MgCO_3 decomposes at about 350° C. Applicants characterize the manufacture of foamed molten metal employing the foaming agent (paragraphs 28-33, and figure 5), wherein the foaming agent foams as a result of the molten alloy Al/Si. The carbonate foaming agent decomposes to form the CO_2 gas, resulting in the foamed molten metal alloy. The foaming agent powder and the molten metal do not coexist as the recited forms. Applicants have received actions on the

powdered foaming agent. The combination with a molten metal and methods of manufacturing a foamed or porous metal are independent and distinct inventions.

Currently amended claim 6 and new claims 7-17 are directed to methods of manufacturing a foamed or porous metal. Applicants have already received an action on the foaming agent compositions. The methods of manufacturing a foamed or porous metal is a non-elected invention by original presentation.

Attention is directed to MPEP 706.07(h), wherein "Applicants cannot file an RCE to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined as a matter of right (i.e., applicant cannot switch inventions)." Applicants may file Divisional applications under 35 USC 111 or 37 CFR 1.52(b), but an RCE is the continued examination of the same application.

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a **TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS**, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.**

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (571) 272-1089. The examiner can normally be reached on Monday to Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski, can be reached on (571) 272-1302. The fax phone

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number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Daniel S. Metzmaier
Primary Examiner
Art Unit 1712

DSM